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No. 1243

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1946

REBECCA NIEWIADOMSKI,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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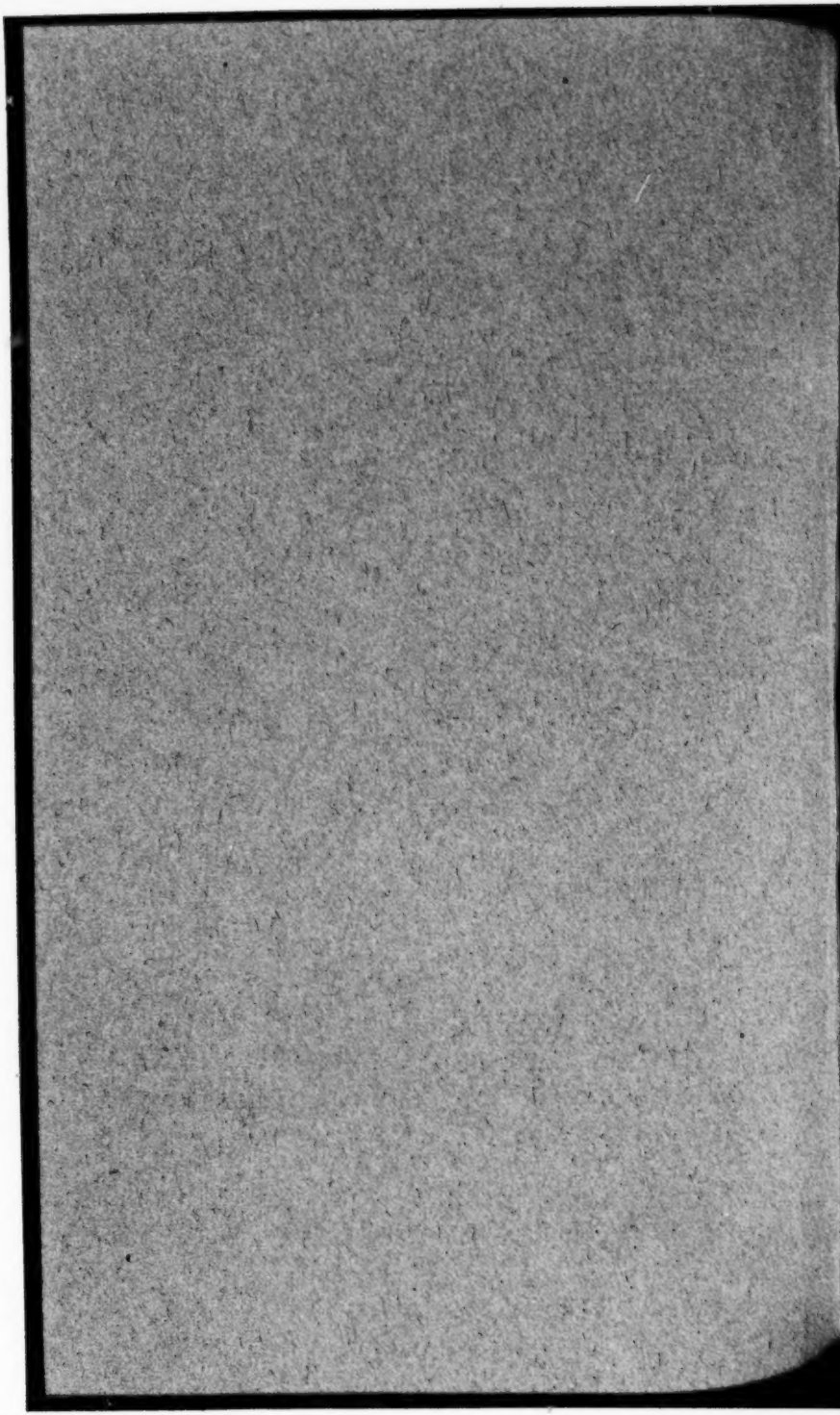

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To the Honorable The Supreme Court of the United States:

Your petitioner, Rebecca Niewiadomski, respectfully prays that a writ of certiorari be issued to review a decision of the United States Circuit Court of Appeals for the Sixth Circuit, entered on the 7th day of February, 1947. A transcript of the record in this case, including the proceedings in said Circuit Court of Appeals is furnished herewith in accordance with Rule 38 of the Rules of this Court.

OPINIONS AND JUDGMENTS BELOW

The opinion of the District Court for the Western District of Michigan, Southern Division, was entered on the

10th day of December, 1945, and is in the transcript of the record at page 129, but is unreported. Judgment was entered the 10th day of December, 1945, and is in the transcript at page 135.

The opinion and judgment of the Circuit Court of Appeals for the Sixth Circuit was entered on the 7th day of February, 1947, and is unreported at this time, but is in the transcript of the record at page 166.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240(a) Judicial Code, as amended (28 U.S.C.A. 347-a) and Section 5 (b) of Rule 38 of this Court.

SUMMARY AND STATEMENT

With the advent of World War II, Congress adopted the National Service Life Insurance Act, which provided the basis for life insurance for persons serving in the armed forces of the United States, who might meet death during the period of their service.

The persons eligible as beneficiaries for this life insurance upon the death of the insured were described in Sections 801 F and 802 G of said Act, Title 38, Federal Code Annotated, as follows:

> "The terms 'parent', 'father' and 'mother' include a father, mother, father through adoption, mother through adoption, and persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year.
>
> "The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent, brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to

change the beneficiary or beneficiaries but only within the classes provided."

The plaintiff brought this action in the United States District Court for the Western District of Michigan, Southern Division, under said law, to recover $3,000.00 made payable to her under a National Service Life Insurance contract, and describing her as a person standing "in loco parentis" to her cousin, Wayne S. Andrews, the insured, who died while serving in the armed forces of the United States, on the 25th day of June, 1944, with all premiums fully paid at the time of his death (10-15).

Prior to the bringing of this action, the defendant, through the Veterans Administration, had declined to pay the claim, claiming that plaintiff did not stand in loco parentis toward deceased; first, because deceased came to live at plaintiff's home after he was 21 years of age, and second, because plaintiff in fact did not stand in loco parentis toward deceased (10-15).

Wayne S. Andrews entered the active armed forces of the United States as a soldier March 24, 1942; that he applied for National Service Life Insurance in the principal sum of $3,000.00, on March 25, 1942, effective April 1, 1942; that the number of his life insurance contract was N-1521190; that the premiums were duly paid from the effective date up to and including the month of June, 1944; that Wayne S. Andrews died while in the military service of the United States, on June 25, 1944; that all the premiums paid have been retained by the United States and not tendered to any one, including the administratrix of Wayne S. Andrews' estate (10-15).

The plaintiff contended in the courts below, and now contends, that the United States is estopped to question the status of plaintiff as a person in loco parentis under the National Service Life Insurance Act, toward deceased soldier, Wayne S. Andrews, where plaintiff was so designated by deceased soldier in good faith and without fraud or concealment, and where premiums on the policy of insurance have been paid for two years or more and there is no tender back of the premiums.

Plaintiff also contended and now contends, that the decisions of the courts below are erroneous on two grounds: First, that they fail to apply the doctrine of estoppel; and second, because after failing to apply the doctrine of estoppel they applied the wrong test to determine whether plaintiff stood in loco parentis toward deceased soldier.

In the District Court of the United States for the Western District of Michigan, Southern Division, and in the Circuit Court of Appeals for the Sixth Circuit, the decisions were to the effect that estoppel should not be applied as against the United States in this case, and that the facts under the applicable law as interpreted by the Court did not constitute plaintiff a person standing in loco parentis toward deceased.

QUESTIONS PRESENTED

1. Is defendant, United States of America, estopped under the facts and circumstances of this case, from denying that plaintiff stands "in loco parentis" toward Wayne S. Andrews, the deceased insured soldier, whose National Service Life Insurance policy was otherwise in full force and effect?

2. If defendant is not estopped, does the fact that deceased soldier was over 21 years of age when he commenced living at the home of plaintiff, prevent plaintiff as a matter of law from standing in the relation of "in loco parentis" toward him under the provisions of the National Service Life Insurance Act, being sections 801 F and 802 G of said Act: Title 38 Federal Code.

3. If defendant is not estopped, was the proper test applied by the courts below to determine whether or not plaintiff stood in the relation of "in loco parentis" toward deceased soldier?

REASONS RELIED ON FOR THE ALLLOWANCE OF THE WRIT

1. Where a service man has in good faith named his beneficiary in a National Service Life Insurance contract as a person standing in loco parentis toward him, and no fraud or concealment exists, and the relationship has continued for more than one year prior to the entry into the Armed Forces of the United States as required by the National Service Life Insurance Act, and when such service man has paid the required premiums up to the time of his death, fundamental right and justice demand that the contract of insurance be carried out and the beneficiary be paid. The doctrine of estoppel should be applied against the United States if necessary to prevent a miscarriage of justice.

The Sixth Circuit Court of Appeals, in deciding this case, recognized the foundation for an estoppel in the following language:

> "In naming her as such beneficiary and as standing in loco parentis to him the insured acted in good faith and no fraud or concealment of any kind is shown. * * * At the time of the issuance of the contract of insurance and at the time of his death, the insured had no actual widow, child, parent, brother or sister. All premiums required to be paid by the terms of the contract were duly paid from April, 1942, through June, 1944. The defendant has retained these premiums and has never tendered return thereof to the administratrix of the insured's estate, duly appointed by the Probate Court of Kent County, Michigan, on August 24, 1944. Such premiums were not tendered into court during these proceedings. Claim for insurance benefits under the policy was filed with the United States Veterans Administration on August 22, 1944, and was denied on February 14, 1945. The complaint stated that a disagreement existed between the plaintiff and the Veterans Administration as to the payment of the insurance according to the terms of the contract."

While the courts below hesitated to apply the doctrine of estoppel, nevertheless, the rule is clear that the doctrine of estoppel is applicable to the United States in a proper case, as is stated in many decisions and texts. Thus, in *Section 169, Estoppel, 19 Am. Jur. 822,* it is said:

> "So far, however, as the United States acts in a proprietary capacity or enters into contract relationships, an estoppel may be asserted against it provided the functions of the government are not impaired thereby. In other words, the law of estoppel, in a proper case, applies to the government. The United States, however, will not be held estopped by an act if a strict construction of the act will avoid it."

2. The question of what test should be applied to determine if one person stands in loco parentis toward another for purposes of the National Service Life Insurance Act has never been decided by the Supreme Court. On this question, the Seventh Circuit Court of Appeals and the Sixth Circuit Court of Appeals are not harmonious. In *Zazove vs. United States,* 156 Fed. (2d) 24, (C. C. A. 7) decided the 27th day of June, 1946, where the cases are reviewed on this question, the Court said:

> "Did Congress use the words *in loco parentis* as descriptive words, or did it use the words with the common law limitation upon them, namely that the relation could not exist unless the insured were a minor? We find no limitation in the words of Congress. We think they were used as descriptive words and were not to be restricted to the 'stick in the bark' legal connotations usually attached at common law."

In the present case, the Sixth Circuit Court said:

> "We do not agree with the construction that the words are descriptive rather than legalistic. The Act is not loosely drawn with respect to the specific persons entitled to be beneficiaries. On the contrary, it goes into detail and enlarges the scope of permitted beneficiaries, where the common law meaning of the word used would be restrictive. It provides that the term 'child' includes an adopted child, and also that

the term includes either a stepchild or an illegitimate child if designated as a beneficiary by the insured. The terms 'father' and 'mother' are broadened by defining them as including a father or mother through adoption. The term 'parent' is also broadened by defining it as a person who has stood in loco parentis to a member of the military or naval forces for a period of not less than one year. Since Congress did not by the terms of the Act enlarge on the generally accepted common law meaning of the term 'in loco parentis,' as it did in the case of children and parents, we believe that Congress intended the term to be construed in its usually accepted common law sense and with regard to the limitations which the common law has consistently for a long period of time attached to it. Such is the well established rule of statutory construction."

Thus, there is a direct conflict in these decisions as to the test to be applied to determine whether or not a person stands in loco parentis to another.

3. During World War II, approximately ten million service men accepted policies of insurance under the National Service Life Insurance Act. It is in the public interest that many of these policyholders who have named persons "in loco parentis" as beneficiaries now know whether or not such designation is valid.

Wherefore petitioner, Rebecca Niewiadomski, above named plaintiff, prays that a writ of certiorari issue to review the judgment entered February 7, 1947, by the Sixth Circuit Court of Appeals.

Dated this 27th day of March, 1947.

Respectfully submitted,

CLARE J. HALL,
Counsel for Petitioner.

FRANCIS L. WILLIAMS,
Of Counsel.